

# EXHIBIT A

FORM B10 (Official Form 10) (04/04)

UNITED STATES BANKRUPTCY COURT <u>SOUTHERN</u> DISTRICT OF <u>NEW YORK</u>		PROOF OF CLAIM
Name of Debtor <b>DELPHI CORPORATION</b>		Case Number <b>05-44481 (RDD)</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <b>GARY WHITNEY</b>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input checked="" type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	THIS SPACE IS FOR COURT USE ONLY
Name and address where notices should be sent: <b>Gary Whitney c/o Theodore A. Cohen - Sheppard Mullin 333 South Hope Street, 48th Floor Los Angeles, California 90071 Telephone number: 213-620-1780</b>		
Account or other number by which creditor identifies debtor:	Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends	a previously filed claim, dated: _____
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Age discrimination, wrongful termination, intentional and negligent infliction of emotional distress</u> <div style="float:right">Retiree benefits as defined in 11 U.S.C. § 1114(a) Wages, salaries, and compensation (fill out below) Last four digits of SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)</div>		
<b>2. Date debt was incurred:</b> <b>June 23, 2004</b>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>*To be proved at trial</u> (unsecured) (secured) (priority) (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) ( _____ ). * Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
<b>6. Unsecured Nonpriority Claim \$</b> <u>*To be proved at trial</u> <input checked="" type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		THIS SPACE IS FOR COURT USE ONLY  <div style="border: 1px solid black; padding: 5px; text-align: center;">RECEIVED JUL 21 2006 CLAIMS AND CREDITORS DIVISION USDC SDNY</div>
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		
<b>9. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <b>July 1, 2006</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <b>Gary Whitney</b>	

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.  
\*Claimant believes that there is insurance coverage for his claims, which are discussed in the attached Complaint

B10

COPY

1 HELMER • FRIEDMAN, LLP  
Gregory D. Helmer (S.B. #150184)  
2 Andrew H. Friedman, P.C. (S.B. #153166)  
723 Ocean Front Walk  
3 Venice, California 90291  
Telephone: (310) 396-7714  
4 Facsimile: (310) 396-9215

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 28 2005

John A. Clarke, Executive Officer/Clerk  
By J. SUNGA, Deputy

5 Attorneys for Plaintiff  
6 GARY WHITNEY

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 GARY WHITNEY,

11 Plaintiff,

12 v.

13 DELPHI CORPORATION, a corporation,  
14 DELPHI PRODUCT AND SERVICE  
SOLUTIONS, INC. a corporation, and  
15 DOES 1 through 50, inclusive,

16 Defendants.

Case No. BC337315

**COMPLAINT FOR DAMAGES:**

- (1) AGE DISCRIMINATION  
[Cal. Gov't Code § 12940];
- (2) WRONGFUL TERMINATION  
AND OTHER ADVERSE  
EMPLOYMENT ACTIONS IN  
VIOLATION OF PUBLIC  
POLICY;
- (3) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS; AND
- (4) NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS

**DEMAND FOR TRIAL BY JURY**

23  
24  
25  
26 Plaintiff GARY WHITNEY (hereinafter referred to as "MR. WHITNEY" or  
27 "PLAINTIFF"), as an individual, complains and alleges as follows:  
28

I.

**INTRODUCTION**

1. In this case, PLAINTIFF, a highly-regarded Regional Sales Manager for defendants Delphi Corporation and Delphi Product and Service Solutions, Inc. (hereinafter "DELPHI" and/or the "COMPANY"), alleges, inter alia, that his employment was terminated due to his age and as part of a pattern and practice to systematically reduce the average age of its workforce by terminating the employment of and/or otherwise pressuring older workers to cease working for it and by hiring younger workers. MR. WHITNEY is alleging both disparate treatment and disparate impact age discrimination. As a result of Defendants' conduct, MR. WHITNEY has sustained substantial economic and severe emotional distress damages.

**JURISDICTION AND VENUE**

2. The Court has personal jurisdiction over the defendants because they are residents of and/or doing business in the State of California.

3. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the defendants, or some of them, reside in this county, and the injuries alleged herein, or some of them, occurred in this county. Venue is further appropriate in this county in accordance with Section 395(a) and Section 395.5 of the California Code of Civil Procedure because defendants and PLAINTIFF contracted to perform some of their obligations in this county, the contract was entered into in this county, because the liability, obligation and breach occurred, at least in part, within this county, and because the principal place of business of defendants, or some of them, are situated in this county. Venue is further appropriate in this county in accordance with Section 12965(b) of the California Government Code because some of the unlawful practices alleged by PLAINTIFF in violation of the California Fair Employment and Housing Act [Cal. Gov't Code §§ 12940, et seq.] were committed in this county.

**PARTIES**

4. GARY WHITNEY is an individual who was subjected to an unlawful termination of his employment in Los Angeles County.

5. MR. WHITNEY is informed and believes, and thereon alleges, that defendant DELPHI, and DOES 1 through 50, and each of them, are, and at all times herein mentioned were, corporations, unincorporated associations, partnerships or other business entities qualified to do business and/or doing business in the State of California. MR. WHITNEY is further informed and believes, and thereon alleges, that said defendants are and were, at all relevant times mentioned herein, "employer[s]" within the meaning of Sections 12926(d) and 12940(j)(4)(A) of the California Government Code.

6. The true names and capacities, whether corporate, associate, individual or otherwise of defendants DOES 1 through 50, inclusive, are unknown to MR. WHITNEY, who therefore sues said defendants by such fictitious names. Each of the defendants designated herein as a DOE is negligently or otherwise legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to MR. WHITNEY, as herein alleged. MR. WHITNEY will seek leave of Court to amend this Complaint to show their names and capacities when the same have been ascertained.

7. At all times herein mentioned, defendants, and each of them, were the agents, representatives, employees, successors and/or assigns, each of the other, and at all times pertinent hereto were acting within the course and scope of their authority as such agents, representatives, employees, successors and/or assigns and acting on behalf of, under the authority of, and subject to the control of each other.

**FACTS COMMON TO ALL CAUSES OF ACTION**

8. Defendant DELPHI manufactures and sells automotive electronics and replacement parts.

9. On January 6, 2002, defendant DELPHI hired MR. WHITNEY as its Western Regional Sales Manager. As the Western Regional Sales Manager, MR. WHITNEY was responsible for serving all states West of the Mississippi.

10. At the time that he was hired, MR. WHITNEY'S immediate supervisor was an individual named Bob Kustasz. MR. WHITNEY is informed and believes, and thereon alleges, that Mr. Kustasz was in his mid-fifties.

11. MR. WHITNEY is informed and believes, and thereon alleges, that in or about the spring of 2003, defendant DELPHI embarked on a pattern and practice to systematically reduce the average age of its workforce by terminating the employment of and/or otherwise pressuring older workers to cease working for it and by hiring younger workers.

13. MR. WHITNEY is informed and believes, and thereon alleges, that in or about the spring of 2003, Mr. Kustasz was terminated and that he was subsequently replaced by an individual named Mike Roberts. MR. WHITNEY is informed and believes, and thereon alleges, that Mr. Roberts was an individual in his mid-thirties. As a consequence of Mr. Kustasz being replaced by Mr. Roberts, Mr. Roberts became MR. WHITNEY'S immediate supervisor.

14. MR. WHITNEY is informed and believes, and thereon alleges, that in or about November 2003, Mr. LaDieu was replaced by an individual named Joe Damato. MR.

1 WHITNEY is informed and believes, and thereon alleges, that Mr. Damato was an individual  
2 in his mid-thirties.  
3

4 15. Since joining DELPHI, MR. WHITNEY's supervisor, Mr. Roberts, who  
5 does not feel comfortable supervising older workers, has hired two new Sales Managers who  
6 are in their mid-thirties.  
7

8 16. On or about June 23, Mr. Roberts summoned MR. WHITNEY to a  
9 meeting at the Century Crown Plaza Hotel in Los Angeles, California. Mr. Roberts  
10 explained that the purpose of the meeting was to go over planning for meetings that they  
11 would be having with defendant DELPHI's customers later in the day. At the meeting, Mr.  
12 Roberts told MR. WHITNEY that he had some "bad news" – he was firing MR. WHITNEY.  
13 When MR. WHITNEY asked why he was being fired, Mr. Roberts asked: "Do we have to go  
14 there?" MR. WHITNEY then responded in the affirmative and Mr. Roberts asked whether  
15 MR. WHITNEY had ever met Burt Valanty (defendant DELPHI's Director of Human  
16 Resources). When MR. WHITNEY said that he had heard of Mr. Valanty but never met him,  
17 an individual walked over and introduced himself to MR. WHITNEY as "Burt Valanty."  
18

19 17. With Mr. Valanty at their table, MR. WHITNEY again asked Mr.  
20 Roberts why he was being fired and what he had done wrong. Mr. Roberts replied: "Gary,  
21 you haven't done anything wrong. In fact, you have done everything I have asked of you.  
22 You haven't done anything wrong, Gary. And I know that all of your dealers really like  
23 you." Incredulous, MR. WHITNEY said: "Is this because I don't fit in with the new team? I  
24 know that I am a lot older than all of the new team members. This about my age, isn't it?"  
25 Neither Mr. Roberts nor Mr. Valanty denied MR. WHITNEY's statement. Instead, Mr.  
26 Roberts looked at Mr. Valanty and Mr. Valanty said: "Let's just say that you do not have the  
27 fit and finish for the new team (e.g., MR. WHITNEY didn't "fit" in a 30-something group  
28 and he didn't have the same "finish" as the younger team members because his appearance

1 was old).”

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

18. Although MR. WHITNEY had never asserted any type of claim against defendant DELPHI, Mr. Valanty handed MR. WHITNEY a Separation Agreement and Release which contained a release of, among other things, his rights under various statutes prohibiting age discrimination including “the Age Discrimination and Employment Act” (sic).

19. MR. WHITNEY is informed and believes, and thereon alleges, that statistical evidence will demonstrate that defendant DELPHI singled him and other workers (age 40 and over) out for termination for an impermissible reason – their age.

20. Prior to the filing of this actions, MR. WHITNEY filed a complaint with the Department of Fair Employment and Housing (“DFEH”) alleging that the acts of defendants, and each of them, established a violation of the Fair Employment and Housing Act, Government Code Section 12900 et. seq., received the requisite right to sue letters, and served those letters on Defendants.

21. MR. WHITNEY has been generally damaged in an amount within the jurisdictional limits of this Court.

\\

\\

\\

\\

\\

\\



**FIRST CAUSE OF ACTION**

**AGE DISCRIMINATION**

**(Cal. Gov't Code § 12940)**

**(Against All Defendants)**

22. MR. WHITNEY realleges and incorporates by reference paragraphs 4 through 36, as though set forth in full.

23. In perpetrating the above-described actions, the defendants, and each of them, including DOES 1 through 50 and/or their agents and employees, subjected MR. WHITNEY to unlawful age discrimination in violation of California Government Code Section 12940 et seq.

24. By the aforesaid acts and omissions of defendants, and each of them, MR. WHITNEY has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not presently ascertained.

25. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, MR. WHITNEY has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering. The exact nature and extent of said injuries is presently unknown to MR. WHITNEY. MR. WHITNEY does not know at this time the exact duration or permanence of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

26. MR. WHITNEY is informed and believes, and thereon alleges, that the

1 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing  
2 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and  
3 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and  
4 safety of MR. WHITNEY, thereby justifying the award of punitive and exemplary damages  
5 in an amount to be determined at trial.

6  
7 27. As a result of defendants' acts and conduct, as alleged herein, MR.  
8 WHITNEY is entitled to reasonable attorneys' fees and costs of suit as provided in Section  
9 12965(b) of the California Government Code.

10  
11 **SECOND CAUSE OF ACTION**  
12 **WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT ACTIONS**  
13 **IN VIOLATION OF PUBLIC POLICY**  
14 (Against all Defendants)

15  
16 28. MR. WHITNEY realleges and incorporates by reference paragraphs 4  
17 through 36, 38 and 44 as though set forth in full.

18  
19 29. As alleged herein, and in violation of public policy, defendant DELPHI  
20 discharged MR. WHITNEY from his employment because of his age. By terminating MR.  
21 WHITNEY's employment, Defendants violated the fundamental public policies of the State  
22 of California, as embodied in Sections 12940 et seq. of the California Government Code, and  
23 other California statutes. Such fundamental public policies prohibit employers from  
24 terminating employees because they are over the age of 40..

25  
26 30. By the aforesaid acts and omissions of defendants, and each of them,  
27 MR. WHITNEY has been directly and legally caused to suffer actual damages including, but  
28 not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and

1 other pecuniary loss not presently ascertained.

2  
3 31. As a further direct and legal result of the acts and conduct of defendants,  
4 and each of them, as aforesaid, MR. WHITNEY has been caused to and did suffer and  
5 continues to suffer severe emotional and mental distress, anguish, humiliation,  
6 embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering. The  
7 exact nature and extent of said injuries is presently unknown to MR. WHITNEY. MR.  
8 WHITNEY does not know at this time the exact duration or permanence of said injuries, but  
9 is informed and believes and thereon alleges that some if not all of the injuries are reasonably  
10 certain to be permanent in character.

11  
12 32. MR. WHITNEY is informed and believes, and thereon alleges, that the  
13 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing  
14 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and  
15 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and  
16 safety of MR. WHITNEY thereby justifying the award of punitive and exemplary damages in  
17 an amount to be determined at trial.

18  
19 33. As a result of defendants' conduct as alleged herein, MR. WHITNEY is  
20 entitled to reasonable attorneys' fees and costs of suit as provided in Section 1021.5 of the  
21 California Civil Procedure Code.

22  
23  
24 **FOURTH CAUSE OF ACTION**  
25 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
26 **(Against all Defendants)**

27  
28 34. MR. WHITNEY realleges and incorporates by reference paragraphs 4

1 through 36, 38, 44 and 50 as though set forth in full.

2  
3 34. Defendants' conduct as described above was extreme and outrageous  
4 and was done with the intent of causing MR. WHITNEY to suffer emotional distress or with  
5 reckless disregard as to whether their conduct would cause her to suffer such distress.

6  
7 35. By the aforesaid acts and omissions of defendants, as aforesaid, MR.  
8 WHITNEY has been caused to and did suffer and continues to suffer severe emotional and  
9 mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, anxiety,  
10 physical pain and suffering. MR. WHITNEY does not know at this time the exact duration  
11 or permanence of said injuries, but is informed and believes and thereon alleges that some if  
12 not all of the injuries are reasonably certain to be permanent in character.

13  
14 36. MR. WHITNEY is informed and believes, and thereon alleges, that the  
15 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing  
16 and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and  
17 despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and  
18 safety of MR. WHITNEY, thereby justifying the award of punitive and exemplary damages  
19 in an amount to be determined at trial.

20  
21 **FIFTH CAUSE OF ACTION**  
22 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
23 **(Against All Defendants)**

24  
25 37. MR. WHITNEY realleges and incorporates by reference paragraphs 4  
26 through 36, 38, 44, 50 and 56 as though set forth in full.

27  
28 38. In the alternative, defendants' conduct, as alleged above, was done in a

1 careless or negligent manner, without consideration for the effect of such conduct upon MR.  
2 WHITNEY's emotional well-being.

3  
4 39. By the aforesaid acts and omissions of defendants, and each of them,  
5 MR. WHITNEY has been caused to and did suffer and continues to suffer severe emotional  
6 and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort,  
7 anxiety, physical pain and suffering. MR. WHITNEY does not know at this time the exact  
8 duration or permanence of said injuries, but is informed and believes and thereon alleges that  
9 some if not all of the injuries are reasonably certain to be permanent in character.

10  
11  
12 **PRAYER FOR RELIEF**

13  
14 WHEREFORE, PLAINTIFF prays for judgment against defendants, and each  
15 of them, as follows:

- 16 1. General damages in an amount to be proved at trial;  
17 2. Special damages in an amount to be proved at trial;  
18 3. Punitive damages in an amount appropriate to punish defendants and to  
19 make an example of Defendant to the community;  
20 4. Reasonable attorneys' fees;  
21 5. Costs of suit;  
22 6. Interest;  
23 7. For such other relief as the Court deems proper.

24  
25 ///


26 ///

27 ///

28 ///

1 DATED: July 27, 2005  
2  
3

HELMER • FRIEDMAN, LLP  
Gregory D. Helmer  
Andrew H. Friedman, P.C.

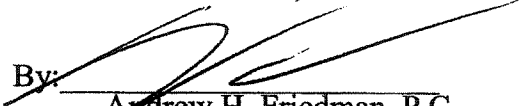
4 By:   
5 Andrew H. Friedman, P.C.  
6 Attorneys for Plaintiff  
7 GARY WHITNEY  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff GARY WHITNEY hereby demands a trial by jury.

DATED: July 27, 2005

HELMER • FRIEDMAN, LLP  
Gregory D. Helmer  
Andrew H. Friedman, P.C.

By:   
Andrew H. Friedman, P.C.  
Attorneys for Plaintiff  
GARY WHITNEY